

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

BATTELLE MEMORIAL INSTITUTE,

Employer

and

PACIFIC NORTHWEST REGIONAL COUNCIL  
OF CARPENTERS, LOCAL UNION 2403,

Case No. 19-RC-135888

Petitioner

and

HANFORD ATOMIC METAL TRADES COUNCIL,

Intervenor.

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**PETITIONER PACIFIC NORTHWEST REGIONAL COUNCIL OF CARPENTERS,  
LOCAL UNION 2403'S REQUEST FOR REVIEW**

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November 7, 2014

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## **TABLE OF AUTHORITIES**

### **CASES**

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*Burns and Roe Services Corporation*, 313 NLRB 1307 (1994).

*Dow Chemical Company, Rocky Flats Division*, 202 NLRB 17 (1973).

*E. I. DuPont de Nemours and Company*, 162 NLRB 413 (1966).

*Kimberly-Clark Corp.*, 197 NLRB 1172 (1972).

*Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387 (1966).

*Metropolitan Opera Association, Inc.*, 327 NLRB 740 (1999).

*MGM Mirage d/b/a the Mirage Casino-Hotel*, 338 NLRB 529 (2002).

*P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988).

### **STATUTES**

29 U.S.C. §151, et seq.

Pursuant to §102.67 of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), the Petitioner in the above-captioned case, Pacific Northwest Regional Council of Carpenters, Local Union 2403 (“Petitioner” or “Local 2403”) files this Request for Review (“Request”) of the Decision and Order (“Decision”) issued by the Regional Director of Region 19 dated October 16, 2014.<sup>1</sup>

## **I. INTRODUCTION**

Petitioner filed the underlying petition in September, 2014. Proceedings before a hearing officer of Region 19 were held over three days from Wednesday, September 10, 2014, through Friday, September 12, 2014, in Richland, Washington. The Decision was subsequently issued by the Regional Director.

Petitioner sought a bargaining unit composed of only carpenters and millwrights employed by the employer, Battelle Memorial Institute (“Battelle”). Battelle “operates the Pacific Northwest National Laboratory (“PNNL”), a United States Department of Energy facility located in Richland, Washington.” Decision, 1. Battelle “recognizes the Intervenor ... [“Hanford Atomic Metal Trades Council” or “HAMTC”] as the collective bargaining representative of approximately 240 employees employed at PNNL.” *Ibid.*

The Regional Director found that the bargaining unit sought by the Petitioner “cannot be severed out of the existing unit as a separate craft unit because only one of six factors supports Petitioner.” Decision, 18. However, there are compelling and substantial reasons that support granting the Request. Under §102.67 (c) of the NLRB’s Rules and Regulations,

a request for review may be granted only upon one or more of the following grounds:

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<sup>1</sup> By letter dated October 23, 2014, the NLRB granted Petitioner’s request and extended the time to file a Request for Review until Friday, November 7, 2014.

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

As explained further below, the Request should be granted pursuant to §102.67 (c) (1), (2), and/or (4).

Respectfully, the Decision is erroneous in many respects. The Regional Director disregarded or failed to consider material facts that support Petitioner. Moreover, many facts that were considered and cited in support of the Decision, were either misstated or insufficient to sustain the Regional Director's findings. The Decision also disregarded or failed to consider policy considerations, and other arguments raised by the Petitioner, and failed to consider the very unique circumstances present in this case.

Indeed, the fundamental purposes of the National Labor Relations Act (29 U.S.C. § 1951, *et seq.*)(the "Act"), raised by Petitioner, were not discussed in the Decision. Forty years of participation by Petitioner and its carpenter and millwright members in the labor relations at Battelle/PNNL was ended for no good reason, and with very serious, adverse consequences for Local 2403's members. Indeed, Petitioner's members have been denied the basic, fundamental right to choose their collective bargaining representative, and such denial is repugnant to the Act.

There are circumstances present in this case that separate it from routine severance cases. The collective bargaining structure at Battelle was upended, and Local 2403's carpenters and millwrights were left without the voice it always had. There is now apparently no regaining that voice or returning to the way things used to be. Faced with no choice, the carpenter and

millwright members are entitled to the opportunity under the Act to freely express their choice for collective bargaining representative.

## **II. STATEMENT OF FACTS**

### **A. Battelle/Pacific Northwest National Laboratory**

Battelle, operator of PNNL, conducts scientific research. This Laboratory conducts radiation, animal, and magnetic research. Hearing Transcript (“HT”) at 20:25 to 21:2.<sup>2</sup> There are 4,000 employees at Battelle mostly consisting of researchers and scientists. The bargaining unit at issue consists of 240 maintenance employees representing about 6% of the Battelle staff. HT 119:12-22. The petitioned for unit consists of 21 carpenter and millwright craftsmen, or about 10% of the existing bargaining unit.

### **B. Hanford Atomic Metal Trades Council**

HAMTC has been the bargaining representative at Battelle for many years. The following unions are/were affiliated with HAMTC:

1. Insulators No. 120
2. Carpenters and Millwrights Local 2403
3. United Steelworkers No. 12-369
4. Operating Engineers 280
5. IBEW No. 984
6. IBEW No. 77
7. Machinists No. 1951
8. Painters No. 427
9. Plumbers and Pipefitters No. 598
10. Teamsters No. 839
11. Sheet Metal Workers No. 55
12. Ironworkers Local 14
13. Boilermakers Local 242.

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<sup>2</sup> “HT” refers to the Hearing Transcript of the underlying proceedings. “Int.”, “Pet.”, and “ER”, refer to an exhibit (“Exh.” or “EX”) entered into the record by Intervenor, Petitioner, or Employer, respectively. “JT” is a Joint Exhibit.

See, JT Exh. 1, at 172-175. JT Exh. 1 is the collective bargaining agreement between HAMTC and Battelle for the period 2010-2013, herein called the “Battelle Agreement”.

HAMTC is chartered by, and subordinate to, the Metal Trades Department of the AFL-CIO (“MTD”).

**C. Local 2403 and Its Ouster From HAMTC/Prejudice Against Local 2403 Members**

Petitioner was chartered by the United Brotherhood of Carpenters and Joiners of America (“UBCJA” or “UBC”) in 1949, and has been affiliated with the Pacific Northwest Regional Council of Carpenters (“Council” or “PNWRCC”) for at least 18 years. HT at 250, 251.<sup>3</sup> Petitioner represented 77 members, all carpenter and millwright craftsmen, 21 of which are carpenter and millwright craftsmen that work at Battelle. HT 251. Battelle carpenter and millwright craftsmen signed authorization cards in support of this present petition as they clearly want to be represented by Petitioner. HT 399:8-13. The other Local 2403 carpenters and millwrights work for other contractors at the Hanford site. HT 251-252.

Local 2403 members elect their own officers. HT 269:15-21. These Local 2403 carpenter and millwright members signed dues check-off cards that required remittance of union dues to Local 2403 from Battelle. HT 271:7-10. Carpenter and millwright members attend Local 2403 meetings.

Although Local 2403 was affiliated with HAMTC since its inception, effective June 1, 2014, Local 2403 was unceremoniously disaffiliated from HAMTC. As a result, all of its traditional rights and powers in representing and enforcing the rights of its dues paying carpenter and millwright craft members at Battelle were terminated by HAMTC. HT: 253: 4-15; Int. Exh.

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<sup>3</sup> Local 2403 had been affiliated with HAMTC since its inception. HT 252: 24-25, 253: 1. Thus, for its entire existence Local 2403 has been involved in protecting the interests of its members employed at the Hanford site.



“4”. This disaffiliation had absolutely nothing to do with any action or inaction by Local 2403 or its members. Local 2403 had admittedly fulfilled all of its duties to HAMTC. These duties included paying its per capita, which was a surcharge paid by each HAMTC affiliate union; participating in monthly meetings; sitting on the HAMTC Executive Board; and paying assessments. HT 253:10 to 255:6. Local 2403 did not choose to be disaffiliated. HT 253:10-12. In other words, Local 2403 was disaffiliated from HAMTC through no fault or choice of its own.

HAMTC President David E. Molnaa wrote a letter to all Local 2403 carpenters and millwrights employed at Battelle dated May 6, 2014. Int. Exh. “4”. He explained that in June 2011, HAMTC’s parent body, the MTD, had revoked the Solidarity Agreement that had allowed Local 2403 to participate in HAMTC. Mr. Molnaa further explained that in September 2011, the MTD Executive Council “passed a motion that assigns UBC jurisdiction as follows: Millwrights jurisdiction assigned to Machinists and Carpenters jurisdiction split between the Boilermakers and Sheet Metal Workers.” Mr. Molnaa stated that due to two years of difficult collective bargaining negotiations, HAMTC waited to implement this directive from above, but that because negotiations have concluded, HAMTC would terminate Local 2403’s representation with HAMTC. Int. Exh. 4. Notably, Local 2403 was kept affiliated with HAMTC during the course of the “difficult negotiations”.

As a result, at Battelle, Local 2403 carpenter craft members were forced into the Sheet Metal Workers Union, and Local 2403 millwright craft members were forced into the Machinists Union. Int. Exh. at 4 (a) and (c). Moreover, Mr. Molnaa advised that, “UBC Local 2403 was no longer eligible to participate in the Welding Pool Agreement.” Int. Exh. 4 at (f). Lastly, Mr. Molnaa observed that “it is very objectionable that matters which have affected one organization

at one location, have indeed affected another organization at another location. This is not your fault any more than it is mine.”

Mr. Molnaa also wrote to Battelle on May 6, 2014, advising of the particulars of Local 2403’s fate. ER Exh. #7. He demanded, of Battelle, that all Appendix A agreements to the Battelle Agreement have stricken from it any references to Petitioner, Local 2403. He further revoked all current dues check off deductions to Local 2403. ER Exh. #7 at p. 2.<sup>4</sup> Mr. Molnaa also directed that “[a]ll UBC Local 2403 members serving as HAMTC stewards are to be removed from their positions” and that if a former steward wanted to continue as such, they must be a member of Machinists Local 1951 or Sheet Metal Workers Local 55. ER. Exh. #7, at p. 2. Molnaa also advised that, “...**UBC Local 2403 no longer has any jurisdictional claim or authority whatsoever within HAMTC**”. (Emphasis added) ER EX #7, at p. 2. Instead, Local 2403 carpenters and millwrights would no longer be able to rely on their own union as they had always done, but instead on other crafts to protect their interests. HAMTC, nor the Sheet Metal Workers Union or the Machinisits Union for that matter, made no guarantees to carpenters and millwrights, except for the unreassuring, obligatory statement: to “make every effort to ensure that all current jurisdictional agreements, decisions, understandings and practices continue and remain unchanged within the Carpenter and Millwright classifications.” ER EX #7, p.2.

By letter dated May 28, 2014, Battelle asked of HAMTC to discuss the issues raised in HAMTC’s May 6, 2014 letter, i.e. ER EX #7. ER EX #8. Again, Local 2403 and its members were completely shut out of this process: they received no notification of the letter or any

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<sup>4</sup> As a result of the disaffiliation, dues of carpenters and millwrights employed at Battelle are no longer remitted to Local 2403, but instead to the Sheet Metal Workers Union, and Machinists Union, respectively. HT 271: 13-19. This has had a seriously adverse effect on Local 2403. HT 297-298.

resulting meetings, and had no input whatsoever to any resulting agreements. HT 262:1-25, 263:1-23. HAMTC and Battelle reached memorandums of understanding (“MOUs”) regarding the members of Local Union 2403. See, ER EXs. #9 and #10. [Indeed, Mr. Scott Flannery, Local 2403’s President and former Chief Steward for millwrights and carpenters, nor any Local 2403 member, saw the MOUs until the hearing in this matter! HT 263:24-25, 264, 265, 266:1-22.] All of the demands made by HAMTC were accepted by Battelle. HT 627-628. Tellingly, no guarantees were made to protect the decades-old interests of carpenters and millwrights; only the superficial phrase, “The parties will make every effort to ensure all current jurisdictional agreements, decisions, understandings and practices will continue to be honored for the Carpenters[/Millwright] classification.” ER EX #9, and #10, at Article V. Mr. Flannery’s skepticism of the MOUs was apparent. HT 268:15-18.<sup>5</sup>

Mr. Flannery testified that Local 2403 members had absolutely no say in which union they were being forced to join, as this was a decision dictated by the MTD. HT 255: 17 to 256:13. Local 2403 members had no choice but to join another HAMTC-affiliated local union in order to continue working at Battelle. HT 255:7-9. Specifically, carpenters at Battelle had to join the Sheet Metal Workers Union and millwrights had to join the Machinists Union. HT 255: 17 to 256:13. The members of Local Union 2403 had absolutely no choice in the matter. Indeed, Local 2403 members had no input nor prior notice of HAMTC’s Molnaa’s May 6, 2014 letter to

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<sup>5</sup> PNWRCC’s Senior Contract Administrator, Ed Triezenberg, with 10 years of contract negotiation experience, testified that an MOU signed by the Employer is a “legal binding document that withstands the test of the court of law” whereas “[a] letter to members has no legal binding effect on anything.” HT at 431:3-5. This agreement thus stripped carpenters and millwrights of rights, without any notice to an actual carpenter or millwright, something that seems unlikely to have occurred if Local 2403 was still able to act on its members’ behalf.

Battelle. HT 258-261. Even more troubling is that Mr. Flannery was on the HAMTC Negotiating Committee at the time, but was shut out of the process.

Finally, Local 2403 delegates were removed from HAMTC's executive board, general assembly, and the jurisdictional committee in 2011. HT 563:24-25, 564:1-11.

Scott Flannery has been a member of the carpenters union for 35 years. HT 247: 20-21, 248:1-8. Mr. Flannery has been a Local 2403 member for the 18 years he's been employed at Battelle. HT 249: 6-13. He and other Battelle employees like him joined Local 2403, and no other craft, for a reason: they are carpenters and millwrights. HT 249; 14-23. Local 2403 provided a community of interest, that neither the Sheet Metal Workers Union nor the Machinists Union can provide to them. The Decision ignored the special camaraderie amongst the carpenter and millwright members of Local 2403.<sup>6</sup>

#### **D. Local 2403's Members' Loss of Rights Due to HAMTC and MTD Termination**

The Battelle Agreement, which expired in 2013, and entrenched tradition, has conferred significant bargaining rights/responsibilities on Local Unions, including Local 2403 before its disaffiliation. These rights and responsibilities have been vigorously exercised by Local 2403 for many years. However, Local 2403 can no longer exercise/enforce such rights and responsibilities on behalf of its Battelle employee carpenters and millwrights, including the following.

##### **i. Negotiating Appendix "As" to the Battelle Agreement**

HAMTC-affiliated Local Unions, on behalf of their members, have the right to re-open and negotiate with Battelle, Appendix "A"s, which are the Battelle Agreement (JT EX 1)

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<sup>6</sup> Representatives of other HAMTC affiliates, including the Sheet Metal Workers Union and the Electricians Union, testified at the hearing, and agreed that each craft, including Carpenters and Millwrights, should have their own union and identity. HT 687, HT 714.

Appendices that set forth the job description and craft jurisdiction of each represented craft, among other things. Mr. Flannery testified that he recalls re-opening Appendix As at least twice, in 2005 and 2010. HT at 335:18-24 to 336: 24. See also, testimony of Battelle’s Labor Relations Manager, Mr. Ken Renteria. HT 121:17-25, HT 122: 1-7; HT 180: 13-23; HT 182: 11-25, HT 183: 1-18; PET EX #2; and Battelle Manager, Mr. James Berger, HT 112: 23-25, HT 113, 1-5. HAMTC affiliates decide if they wish to reopen Appendix As. HT 186: 16-18 HT 189:25, HT 190: 1-2. No prior approval or input is required from HAMTC for Local 2403 to have made a proposal regarding its Appendix A. HT 337:7-9, 14-16. Indeed, it was Local 2403, not HAMTC, representatives that presented proposals to Battelle as to additional training, access to facilities, transferring into work teams, pay rates, and overtime procedures. Pet. Exhs. #2, #3. Mr. Renteria, Battelle’s Labor Relations Manager since 2008, testified that, “*Appendix As are unique agreements with a particular affiliate or particular craft. Examples are special shifts, special training requirements, things of that nature that only apply to a particular craft.*” (Italics added) HT 121: 17-21.

HAMTC’s recording secretary attends these meetings to take notes, but offers no input on the substantive proposals. HT: 337:4-11. There is no evidence that the HAMTC recorder in any way participated substantively in these Appendix A negotiations, which are within the recognized expertise and unique province of the Local Union. HT 339: 18 to 340:1. As a formality, these Appendix As are implicitly approved by HAMTC, when the collective bargaining agreement is approved. HT 113: 2-5; HT 180: 13-23; Pet. Exh. 2. There is no evidence any Appendix As were ever rejected by HAMTC.

Now, since its disaffiliation from HAMTC, Local 2403 no longer has any say in Appendix As that affect carpenters or millwrights. HT 306:13-15. It is now possible to change

the job description of a carpenter or a millwright through the Appendix A. HT 339:10-15.

Indeed, the carpenter and millwright craft designations at Battelle can now even be eliminated by the Machinists and/or Sheet Metal Workers Unions. HT 193: 9-16, 194: 1-5.

**ii. Seat on Negotiating Committee**

Local 2403 no longer has a seat on HAMTC's Negotiating Committee, which is a right granted to each HAMTC-affiliated Local Union's chief steward. HT 257:19-23. Each Local Union puts forth its representative. HT 209: 6-14. Scott Flannery, as Chief Steward from Local 2403, had represented the carpenters and millwrights on the Negotiating Committee. Now, Mr. Flannery, as a carpenter, is assigned to the Sheet Metal Workers Union, which already has a chief steward, so he has no right to remain on the Negotiating Committee for the next bargaining cycle. HT 261:4-12. He testified that presently he is merely a Shop Steward, and in order to remain a steward he had no choice but to join the Sheet Metal Workers Union. HT 261:4-25. Battelle's Mr. Renteria acknowledged that Sheet Metal Workers Union stewards now representing Carpenters and Machinists stewards now representing Millwrights can be replaced at anytime. HT 174: 7-21.

**iii. Seat on HAMTC's Executive Board**

Local 2403 had a seat on HAMTC's Executive Board. HT at 54:16-20. This is no longer the case since its expulsion from HAMTC. See also, Int. EX #6, HAMTC By-laws, Article V "Executive Board and Executive Committee", §1, which provides that, "(t)he Executive Board shall consist of the President, Vice-President, Secretary-treasurer, Recording Secretary, and *one delegate from each affiliate local union* and each National or International Union affiliated with this Council." (Italics added) Thus, Local 2403 members are no longer entitled to a seat on the HAMTC Executive Board. The Decision correctly points out that, "Petitioner also had a seat on

HAMTC's executive board while a member union, that is no longer the case following the disaffiliation". However, the Decision mistakenly concludes that "(t)he record does not establish the impact of this lost seat." The record does, as it includes Int. EX #6, HAMTC By-laws, Article V, §4, which provides that, "(t)he Executive Board shall examine and pass upon all bills and expenditures, except regular standing bills such as salaries, rent, etc. The Executive Board shall be empowered to act in absence of the Council." Thus, due to its expulsion from HAMTC, Local 2403 and its members are deprived of a seat on HAMTC's Executive Board, and all the authority and representation such seat provides.<sup>7</sup>

#### **iv. Filing Jurisdictional Grievances**

Because of the disaffiliation, Local 2403 no longer appoints stewards. Local 2403 stewards filed jurisdictional disputes and grievances and decided whether to accept Battelle's response or to escalate the grievance to Step Two. JT Exh. 1, at p. 99-100.<sup>8</sup> The driving force behind jurisdictional enforcement is each Local Union's Chief Steward. According to Sheet Metal Workers Union Chief Steward Kurt Watts, the chief steward has unique powers, namely, the "chief steward is the one that kind of makes the decisions on what the craft is going to do. He's the one that kind of pushes the issue." HT 679:15-19. These decisions and the "pushing of issues" unique to carpenter and millwright craftsmen are now up to other unions that have been directly adverse parties to Local 2403 in jurisdictional disputes in the past.<sup>9</sup>

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<sup>7</sup> Carpenters and millwrights have "always been represented by Local 2403 in terms of their role at HAMTC". HT 402:21-24.

<sup>8</sup> See, in general, ER EX #13. In the first grievance, dated January 2, 2014, it provides that, "Local 2403 [not HAMTC] is grieved with Battelle...." The grievance is presented by Scott Flannery regarding the carpenter craft.

<sup>9</sup> Local 2403 has had jurisdictional disputes with the Sheet Metal Workers Union at Battelle in the past. ER EX #14. Indeed, Battelle's Labor Relations Manager Ken Renteria noted the inherent conflict of interest, given past jurisdictional disputes between carpenters and sheet metal workers, in the Sheet Metal Workers Union attempting to represent carpenter craft members' interests. HT 179: 5-10.

Scott Flannery, the former Chief Steward of Local 2403 for the carpenters and millwrights, was forced to become a member of the Sheet Metal Workers Union. Under the Battelle Agreement, each Local Union has one Chief Steward. Jt. Exh. “1” at p 97, Paragraph 5 “...generally one from each craft affiliated with the Council...” Mr. Flannery testified that he is no longer a Chief Steward as a result of the disaffiliation.

**v. Processing Grievances**

Grievances are initially handled at the craft level. Battelle’s Mr. Renteria testified that, “(s)o if there’s an issue out in the field that can be handled with [Battelle’s supervisory] team leads, the supervisors, *and the craft* [e.g. carpenter or millwright craft], they’ll try to resolve the issue.” HT 155: 1-9. A carpenter would take a grievance to his carpenter shop steward at Step 1 of the grievance process. HT 157: 13-25. The grievance “sticks within the craft.” HT 157: 23-25. If a carpenter craftsman has a grievance and the carpenter steward is not in his or her work group, the carpenter seeks out the carpenter chief steward. HT 158: 1-21. These facts were not adequately considered by the Regional Director in the Decision. Local 2403 decided whether to take a grievance to arbitration and paid legal fees and costs to do so. HT at 329:6-15. Now, since Local 2403’s disaffiliation, Mr. Flannery testified that he could no longer decide to push a grievance to arbitration on his own and that if he did, the Sheet Metal Workers Union would have to agree to pay for said arbitration. HT at 329:16 to 330:5.

The Battelle Agreement, JT Exh. 1 at p. 98, Paragraph 5, provides, “Battelle shall recognize a Council [HAMTC] Grievance Committee, not to exceed one for each HAMTC

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Furthermore, in the Decision, the Regional Director “recognize[d] that the jurisdictional concerns of the carpenters and millwrights are arguably reasonable”. Decision, 14. Incredibly, however, the Regional Director concludes it is not necessarily a problem to put carpenters and millwrights into the very unions with which they have disputes. *Id.*, 14-15.



affiliate....” Local 2403 members no longer have this representation. Mr. Flannery also explained that in his role representing Local 2403, while a Step Two grievance was pending, he “could work Mr. Renteria for a better answer, show him more evidence, and when we get to the step two process ask him to give me a revised step one answer.” HT 328-329.

**vi. Seat on Jurisdictional Committee**

Local 2403, prior to disaffiliation but not anymore, enjoyed a seat on the HAMTC Jurisdictional Committee that decides jurisdictional disputes between the different crafts that reach Step Two of the grievance process. HT 331:13-20. Now, Battelle carpenters must hope that the Sheet Metal Workers Union and the Battelle millwrights must hope that the Machinists Union will vote in their favor, even if the jurisdictional dispute is directly against the Sheet Metal Workers Union or Machinists Union. Practically speaking, having a seat gives Local Unions leverage to engage in horse-trading and deal making to accommodate and mutually benefit one another’s members, a powerful advantage that has been stripped from the carpenters and millwrights and conferred upon others, who may or may not exercise such leverage fairly, depending on their inclination.

**E. Organization of Craft Work at Battelle**

The existing bargaining unit at Battelle/PNNL, Maintenance and Fabrication Services (“M&F”), does facilities maintenance. Battelle’s worksite or “campus” spans several blocks of streets and dozens of buildings. (HT at 23:18-24; ER Exh. 1 [Campus Map]). For example, a carpenter will make a crate to transport research animals. The M&F employees perform the full range of maintenance work for many of the buildings, particularly in the northwest campus. HT at 23:20-24. Some of the crafts in the unit also make “widgets” for the researchers. (HT at 21:2-5).

For some buildings, like those in the southern part of the campus, there is no maintenance work. In the south campus, the existing bargaining unit work is primarily janitorial services, and moving people and things into offices. HT at 24:20-25.

Battelle has thus organized 14 different crafts into 11 work teams in order to cover the campus geography. HT at 26:5-6; ER Exh. #2, Organization Chart. Some work teams consist solely of one craft that works across the entire campus. HT 33:5-21. For example, the Utility Operations Work Team is made up solely of Power Operators. HT at 33:5-10; ER Exh. 2. The Custodial & Floor Services Work Team is made up solely of Janitors. ER Exh. 2.

Similarly, the “Grounds, Relocation & Receiving” crew is made up mostly of teamsters whose scope of work covers moving furniture. ER Exh. 2. The sole carpenter assigned to this crew, Mr. Martinez, performs traditional carpenter work, namely assembling of furniture in the warehouse, which he then puts together in the office that the move is happening, as well as hanging pictures, corkboards, white boards and other traditional carpenter craft maintenance work. HT 281: 2 to 283:16. But there are instances when a carpenter will not be part of a move crew. HT 238: 17-25, HT 239: 1-6. Carpenters have their own truck on the “move” crew. HT 283:9-15. The Fabrication work team made up mostly of machinists and sheet metal workers is captive to the machine shop.

#### **F. The Six Mixed Craft Maintenance Teams are Composed Along Jurisdictional Craft Lines**

The work teams that cover maintenance work span several different craft jurisdictions as they are mostly “captive”, meaning assigned to certain buildings clustered together on campus. HT at 34:7-17. These teams include sufficient numbers of distinct journeymen craftsmen that can perform the exclusive jurisdictional craft work required to maintain the particular set of buildings they’re assigned to. The Physical Sciences Facilities 1 Work Team covers three (3)

specific buildings. HT 34:12-17. This team has one (1) millwright because these 3 buildings generate sufficient millwright work to keep one millwright busy. The M&F Manager, Mr. James Berger, refers to teams as having “FTE” or “full-time equivalent” worth of work for a particular craft’s journeyman.<sup>10</sup> HT at 36:18-23. Four of the six mixed craft teams include both carpenters and millwrights in varying numbers (PSF2, RCHN1, RCHN2, and RCHN3).

**G. Carpenters and Millwrights Do Craft Specific Work Assigned by Work Orders and Have Separate Seniority Lists From all Other Crafts and Separate Tools and Training**

The eleven Battelle carpenters do carpenter craft-specific work, regardless of their assignment to a mixed craft team. For example, on the “RCNH1 Work Team”, all four (4) carpenters are locksmiths and they do locksmith work all over campus. HT 41:4-11. Mr. Berger testified that carpenters do “traditional carpentry work”, meaning lots of wood, roofing, plastic work, and Plexiglass work. HT 44:8-14. He testified that no other craft performs the work that carpenters do at Battelle. HT 45:6-10. Some work teams have no full-time carpenters. HT 36: 16-23. No carpenters or millwrights are on the fabrication work team. HT 38: 16-18.

Berger also explained that there are two carpenter shops at Battelle. HT 26: 11-19. See also HT 310. Carpenters report to those shops every day and use the carpenter tools in those shops. HT at 310: 4-20. One of the carpenter shops, the one located in the 350 building, is the main carpenter shop. HT 27:2-4. Berger described the work performed by carpenters in the carpenter shop and explained that “non-carpenters” do not use the tools in the carpenter shops. HT 27. These tools are standard carpenter tools, including saws, band saw, Plexiglass heater and bender. HT 27:2-25; ER Exh. 5. Typically, non-carpenters do not use the carpenters tools or

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<sup>10</sup> Berger has been employed at Battelle since 1990, and has been manager of M&F for the past six to eight years. HT 19: 21-25, 20: 1-2.

when they do, they use different modalities of the tools that the carpenters don't use. HT at 27:23-25. For example, carpenters would use a wood blade versus a sheet metal worker would use a metal blade and would rarely if ever use a wood blade. HT at 307:4-16. Carpenters and millwrights exclusively use certain tools at Battelle. ER EX #5. Each work team leader assigns work to the proper craft. HT 51:15-20, HT 670. The record, taken as a whole, shows that no other Battelle employees are required to have the same level of training in the carpenter and millwright crafts other than carpenters and millwrights.

Mr. Berger testified that millwrights do fabrication, alignment, pump shafts, motors, hoisting and rigging, and inspections, including crane inspections, and a lot of precision work. HT 44:20-23. Millwrights also change large powerful air filters called HEEPA filters. HT 287:7-18. Machinists do "traditional machinist on steroids" type of work. HT 45:12-14. Sheet metal craft workers do "what you would traditionally call ... sheet metal work." HT 46:14-19. It is apparent from the record as a whole that carpenters and millwrights have no community of interest with any other craft, including sheet metal workers and machinists, respectively.

Mr. Flannery testified at length as to the unique craft work performed by both carpenters and millwrights. He testified that building scaffolding, building shopping crates, opening crates, building widgets were all strictly and exclusively carpenter work that no other craft performs at Battelle. HT 288:3-25.

Likewise, electricians exclusively do electrician craft work, which is "high end low voltage work" that ranges from intricate work to pulling wire for a light switch. HT 276:3-14. No one but electricians do this work. Pipefitters likewise do pipefitter craft work, meaning "change bottles, run tubing, work on piping stuff." HT 275:9-21. Painters, similarly, "make[] signs, labels and ... paint[]." HT 274:19-25. Refrigeration craft, which is a craft represented by

the Pipefitters Union, works on “chilled water systems, HVAC, cooling heating symptoms”. HT 277:18-21.

Battelle manager Mr. Berger testified that at least 90% of the work carpenters and millwrights do was craft specific work that each exclusively performs. HT 78:18-25, 79: 1-7. Each craft at Battelle has a job description. HT 91:18-21.

Work is assigned to bargaining unit members by craft jurisdiction. HT at 75:14 to 76:6. The work to be done by a certain craft is set out in documents called Work Orders or Service Requests that assign a lead craft to each task. The Regional Director erroneously concluded in the Decision that, “(t)he record indicates that *normally* assignments require multiple crafts to complete a task.” Decision, 5, italics added. The record simply does not support this conclusion. HT 51:15-25; 52:17-25, 53: 1-6; HT 311, 312:1-21; HT 685-686. See also, HT 368:3-11; HT 379:1-25, HT 380:1-4<sup>11</sup>; Pet. EXs. 6-10, HT 315-326. These exhibits are Battelle Work Orders, which show that sometimes the carpenter craft does all the work (Pet. EX 8, 9), or shows that in those instances where a work order requires multiple crafts to do a part of the work involved, carpenter work is done exclusively by carpenters, and carpenters do not do other craft’s work if called for on a particular work order.

ER’s Exh. 3 is a copy of all Work Orders for all Crafts from February 2014 to September 2014. HT 49; 18-19. There are specific tasks designated to carpenters that fall within traditional carpenter work. Carpenter work is denoted by the letter “C” for Lead Craft. Some of these tasks

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<sup>11</sup> Intervenor’s counsel cross-examined Mr. Flannery in this regard:

Q More often than not you’re doing carpenter work as completing service request, a PM [preventative maintenance] or a widget construction *without help from anybody else*?

A Correct. [Emphasis added]

are: “Wooden Crate Fabrication”, “Roof Leak”, “Lock Broken on Door”, “Reset Ceiling Tile”, “Broken Door Handles”, “Build Shipping Crate”. ER Exh “3”.

There are specific tasks designated to millwrights denoted by “MW”. These craft specific tasks include, “Precision cut of stainless steel foil”; “Wire Rope Inspection for Crane #22340; “Trouble shoot and repair pump”; “Add oil to Rotary Pump”; “Jib Crane in Quiet Wing”. See, ER Exh “3” for “MW” lead craft designation. This holds true for all the crafts.

Similarly, the Work Order Details produced by Scott Flannery likewise allocate carpenter craft specific work to carpenters such as “remove cork boards from walls” or “repair door weather stripping”. Pet. Exhs. #6-10.

Sometimes there are work orders that include several crafts but each craft is assigned work that falls within its exclusive jurisdiction. HT 57: 6-16. For example, numerous crafts perform preventative maintenance for fire barriers but the task allocated to each craft covers its jurisdictional work. Hence “the carpenters will go and inspect the fire doors, the fire walls, the pipefitters will inspect all the sprinkler heads, our sheet metal workers would go and inspect all the dampers, fire dampers.” HT at 314:3-17. HT 401:25-402:1-20.

All parties stipulated that each craft has a separate seniority list, and a journeyman from one craft cannot bump another craft’s seniority. Pet. Exh. 5. Each craft, including carpenters and millwrights, also have their own overtime lists for their respective craft. HT 63: 17-19; HT 99: 9-16. Overtime is assigned based on craft. HT 101: 9-20. Carpenters’ and millwrights’ overtime policy is different from other crafts at Battelle. HT 304:25, 305, 306:1-15.

Battelle’s Mr. Berger also discussed Battelle’s craft alignment program. This program is intended to “augment the work force”. It allows crafts to help each other out at times but it is a

“de minimis amount of work” and each craft still keeps their “jurisdiction aligned”. HT 63: 1-3. In other words, “(i)t is the occasional helping hand.” HT 63: 4-5.

Several of the carpenters and millwrights at Battelle have gone through apprenticeship programs. HT 300. This fact was disregarded or not adequately considered in the Decision. (See, Decision, 5) Furthermore, carpenters and millwrights get unique training that no other craft gets at Battelle. For carpenters, this includes scaffolding training at the UBC Training Center in Kennewick, Washington put on by the PNWRCC. HT at 298:20 to 299:9. Battelle’s Manager, Mr. Berger, confirmed that only carpenters get scaffolding training; no other craft gets this training. HT at 75:11-13. Also, the carpenter locksmiths get sent to special training in Kentucky a few times a year to be certified to meet Department of Energy regulations. HT 299:10-16. No other craft gets this training either.

Only millwright craft employees get laser alignment training. HT at 65:14-19. Likewise, installation and maintenance of manipulator arm training is solely reserved for millwrights. HT 65:25 to 66:17. Millwrights exclusively are trained on shaft alignment and mechanical inspection of cranes. HT at 77:9-18. Berger testified that “a machinist either goes through an apprenticeship or a trade school” and carpenters and machinists are “totally different trades”. HT 80: 7-13. When hiring carpenters, Battelle looks for an apprenticeship background, according to Battelle’s Mr. Berger. HT 87: 2-17. Battelle millwrights have been through an apprenticeship program. HT 87: 18-20. Mr. Flannery, a carpenter with 18-years’ experience at Battelle, explained that, when hiring carpenters Battelle looks for “someone with experience...in the carpentry field. ...It’s been a while since I [sic] hired one. They’re [Battelle] looking for apprenticeship. Years of hands-on training, able to do certain work.” HT 300:5-13. The

Regional Director wrongly concluded that Battelle when hiring does not seek out experienced carpenters and millwrights. Decision, 12.

**H. Jurisdictional Disputes Between Carpenters and Sheet Metal Workers and Millwrights and Machinists**

There have been many jurisdictional disputes at Battelle. ER Exhs. #13, #14, #15, and #16. Traditionally, Local 2403's now-former Chief Steward Mr. Flannery filed and advocated these grievances for both carpenters and millwrights. He testified that a shop steward's authority was more limited as they try to police the work but that the "Chief steward will talk to the other chief steward, try to get the issue worked out, or proceed with the grievance." HT at 292: 6-7.

Now, Mr. Flannery testified, "all the matters pertaining [to what] I used to do" he would now run it by Ian Hunsaker, the Chief Steward for the Sheet Metal Workers Union. HT at 290:14-23. Mr. Flannery now reports to Mr. Hunsaker. HT at 291:1-6. He no longer has final say if a grievance affecting carpenters or millwrights now goes to arbitration. HT 292: 8-24. Mr. Flannery is no longer a chief steward as a result of the disaffiliation, and no longer has that authority. HT 292, 293:1. Mr. Flannery talked about other changes in his steward duties since disaffiliation. For example, Mr. Hunsaker can now instruct Mr. Flannery to pull a grievance. HT 393:19-25. See also, HT 400:16-25, 401:1-24.

Mr. Flannery also stated that he can be replaced as the shop steward for carpenters by a sheet metal worker:

*Q. And can you be replaced as a steward for the sheet metal workers?*

*A. It's their call.*

*Q. Do you have any say in that?*

*A. I do not.*

HT at 291:13-16.

Mr. Flannery testified that every single carpenter at Battelle complained of having to join the Sheet Metal Workers' Union. They complained because "they don't want to be a sheet metal



worker” and “all of our battles have been with sheet metal.” HT: 295: 24 to 296:1-4.<sup>12</sup> Mr.

Flannery cited as one example, a recurring jurisdictional dispute between Battelle Carpenters and Sheet Metal workers as to metal on walls. HT 296:3-12.<sup>13</sup>

This dispute over who has jurisdiction over metal on walls dates back to 1990, as evidenced by a grievance filed May 29, 2012. ER Exh. #13. The grievance filed by Mr. Flannery reads, “(t)he 1990 Arbitration case #87-4 and 88-17 was over the installation of stainless steel on the wall, door and door jamb in the 320 Bld. Room 7.” The Arbitrator’s decision reads, “In case 97-4 metal trim, the work involved in that case, or like work, is within the jurisdiction of the Carpenters.” ER EX. 13. Assembling of metal furniture is another long-standing jurisdictional dispute between Carpenters and Sheet Metal Workers. ER EX #16.

The interests of Carpenters and Millwrights are now at risk. Mr. Flannery was asked what would happen if the recurring decades-long jurisdictional disputes arose again between Carpenters and Sheet Metal Workers Union, that now putatively represents Carpenters at Battelle. He testified that “my take on this is that now that carpenters and sheet metal ... it’s an internal issue amongst themselves. I don’t feel like I’m going to have any stroke pushing our issue” because it will be considered an intra-union issue. HT 335:5-15.

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<sup>12</sup> Mr. Flannery passionately elaborated in response to a question regarding this particular matter: “A All the carpenters, all the millwrights [are craftsmen]. We take a lot of pride in what we do. We didn’t just willy-nilly decide [‘](O)h well, let’s be a carpenter [or a millwright].[’] A lot of us have been in the trade 20, 30 years. We take a lot of pride in what we do. We’re not generic. ... We’re carpenters. We’re millwrights.

Q And do the carpenters and millwrights, do they want to be together in their union?

A We’ve always been together at Local 2403.” HT 297:1-9.

Mr. Flannery also described the camaraderie amongst carpenters and millwrights from being in their own union. HT 302:8-24.

<sup>13</sup> A representative of the MTD acknowledged that by filing the representation petition in this matter, carpenters and millwrights have complained about the way they have been treated as a result of the disaffiliation. HT 504:24-25, 505, 506:1-13.

As another example, on July 31, 2014, the Millwrights' traditional work was simply relinquished to the Pipefitters Local by their new Local Union, the Machinists. The Millwrights' steward, Scott Gordon, had filed a grievance over the assembly and disassembly of gantry cranes, including the assembly and disassembly of A-Frames. Machinist representative, Mr. Howard, testified that at a meeting of 5 Machinists, 3 Pipefitters, the Machinist Chief Steward, a Millwright steward from another Hanford Employer – not Battelle, and "I believe" 3 millwrights, he came up with a resolution to the dispute. HT 638: 4-20. The resolution was to agree that Pipefitters could do Millwright work, namely set up and take down of A-Frames. ER Exh. 17.

When pressed whether or not millwrights had told him that this was Millwright jurisdiction, he first denied there were any A-Frames at the workplace, then he admitted, "I don't know" and repeated "I don't know on that specific part." HT 650:21 to 651:20. PNWRCC and Local 2403 does know what carpenters and millwrights do, down to "that specific part" and this is why Local 2403 is uniquely qualified and necessary to champion Carpenters and Millwrights' interests at Battelle.

The Regional Director incorrectly concluded that, "the evidence is mixed and does not support the conclusion that the Machinists somehow inappropriately traded away millwright work to another HAMTC craft." But the point missed by the Regional Director is that the type of representation provided by a non-carpenter/non-millwright craft, where the evidence regarding the result is "mixed", is only the beginning. Carpenters and millwrights have the statutory right under these circumstances to decide who will represent them.

#### **I. Inter-Craft Transfers are Exceedingly Rare**

Battelle Manager Mr. Berger testified that transferring from one craft to another craft is rare.

- Q. Do people transfer between crafts?*  
*A. Very seldom.*  
*Q. How often does that happen in your experience?*  
*A. Four times I believe off the top of my head.*  
*Q. And going over how long a period of time?*  
*A. Probably since 1990.*

HT 66:21 to 67:1.

Even when there are employees who move from one craft to another, the evidence shows it is a formal process more akin to a new hire, rather than a seamless transfer between generic or similar job classifications. In other words, employees do not transfer *per se*, but actually are newly-hired employees. Furthermore, Battelle's Labor Relations Manager Mr. Renteria testified that there have been only about nine or ten permanent transfers among the different crafts at Battelle over the past *ten years*. HT 618. Mark Shear, a Battelle Teamster with an industrial mechanic background and aptitude, testified he did not transfer, so much as get re-hired at Battelle as a millwright. HT at 722:10-25. Mr. Shear had to submit an application for the millwright position, and then undergo one interview and then a follow-up interview before he was hired, despite having worked at Battelle since May of 1989. HT 723:2-18; 724: 14-18. Once hired, Shear received on-the-job training from millwrights. HT 107: 14-21; HT 751: 16-25, 752: 1-16. Hence, transfers are rare and when they happen, only qualified craftpersons are hired. The lack of a true transfer or even the very minimal amount of transfers involved here, support a finding that the carpenters/millwrights are a true, separate craft.

**J. Labor Stability Will Not be Harmed if Severance Petition Granted**

Battelle's Labor Relations Manager of five plus years, Ken Renteria, testified that based on his past experience, he was confident that Mr. Flannery would bargain in good faith if the

Carpenters and Millwrights were allowed their own bargaining unit. He stated he was “absolutely” sure that this was so and that Mr. Flannery was an honorable man. He also expected that if Local 2403 was certified that Mr. Flannery would bargain in such a way as to have the least impact on Battelle’s operations. HT 191-193.

PNWRCC’s Senior Contract Administrator, Mr. Triezenberg, likewise testified that he foresaw no issues as this was the case for numerous bargaining units that were formerly represented by the MTD. He explained, “I represent a number of bargaining units that have been separated out from former metal trades units. In the last four or five years... seven or eight of them, and there’s no issues at all that have ever been indicated to me by any employer that creates a hardship for them.” HT 436:3-12; Pet. Exhs. 14-20 & 22.

#### **K. Pattern of Bargaining in Relevant Industries**

Mr. Triezenberg also testified as to numerous stand-alone contracts negotiated by the PNWRCC with Employers that had formerly bargained with HAMTC as the bargaining representative for Carpenters.

Mr. Triezenberg also testified that the most analogous contract to the Battelle Agreement at issue was the Washington State Ferries. HT 478:19-22. Mr. Triezenberg explained that this was so because there are multiple facilities maintenance covered by the Washington State Ferries contract.

Mr. Shaffer, a general representative for the MTD, was called as a witness for Intervenor. HT 482:2-13. Ostensibly he was called to discuss similarities with the HAMTC-represented site and other Battelle sites around the United States. HT 487:13-15. Although collective bargaining agreements at other Battelle sites may be similar to the Battelle Agreement, they are not identical. HT 487:13-22. Mr. Shaffer’s descriptions of the similarities in work performed at the

different sites were vague, self-serving, and irrelevant. HT 493:2-25, 494, 495, 496:1-6. Indeed, he acknowledged that the missions of each site are different. HT 500:20-25, 501:1-21. It is undisputed that Battelle is not in the weapons industry and does not manufacture nuclear or ballistic missiles. HT 590: 12-14.

Shaffer admitted that the craft work at each site was different, but could not elaborate with any specificity. HT 506:14-25, 507:1-6. Some sites had no millwrights. HT 581, 588. Some sites had no carpenters or millwrights. Furthermore, with respect to the collective bargaining agreement marked as Int. EX #9, Mr. Shaffer did not negotiate the contract, and did not know what the carpenters and millwrights did at this particular site. HT 592-593.

### III. ARGUMENT

At the outset, it is appropriate to set forth the nature of the issue confronting the Board in making unit determinations in severance cases. *Underlying such determinations is the need to balance the interest of the employer and the total employee complement in maintaining the industrial stability and resulting benefits of an historical plantwide bargaining unit as against the interest of a portion of such complement in having an opportunity to break away from the historical unit by a vote for separate representation.* The Board does not exercise its judgment lightly in these difficult areas. Each such case involves a resolution of ‘what would best serve the working man in his effort to bargain collectively with his employer, and what would best serve the interest of the country as a whole. [Footnote omitted] [Italics added],’<sup>14</sup> *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387, 392 (1966)

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<sup>14</sup> “The problem of striking a balance has been the subject of Board and congressional concern since the early days in the administration of the Wagner Act. ....when Congress amended the Wagner Act in 1947 by enactment of the Taft-Hartley Act, it added a proviso to Section 9(b), stating in pertinent part:

The Board shall...not...(2) decide that any craft unit is inappropriate on...the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation.

...it is equally clear that Congress did not intend to take away the Board’s discretionary authority to find craft units to be inappropriate for collective-bargaining purposes if a review of *all* the facts, both *pro* and *con* severance, led to such result. [Italics in original]” *Id.* at 392-393.

**A. The Carpenters and Millwrights Constitute a Fit and Proper Bargaining Unit as the Evidence Amply Meets the *Mallinckrodt* Factors**

Determination of an appropriate bargaining unit is guided by the objectives of ensuring employee self-organization, promoting freedom of choice in collective bargaining, and advancement of industrial peace and stability. These objectives are realized when the members of an appropriate unit share, inter alia, a community of interest in wages, hours, and other terms and conditions of employment.

Board inquiry pursues not the most appropriate or comprehensive unit but simply an appropriate unit. [Citation omitted][Emphasis added][*P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988)]

The Decision was erroneous in many respects. The Regional Director found only one of the six *Mallinckrodt* factors to favor the Petitioner. Not only did Petitioner meet more than one factor, but the Decision ignored other very important policy and factual considerations.

The Decision wrongly concluded that the carpenters and millwrights are not a “true craft or functionally distinct department”. Decision, 12. Second, the Decision gave too much emphasis to the prior bargaining history in the present case. The Regional Director took “administrative notice that a petition was filed with this Region in Case 19-RC-14231 [sic] to sever a craft from a HAMTC bargaining unit at the Hanford site in 2002.” Decision, 8. A Decision and Direction of Election (“DDE”) was issued in 19-RC-14213, dated March 22, 2002. Interestingly, in that severance case, the Region explained that, “(t)he unit sought by a petitioner need not be the most appropriate unit or the only appropriate unit. Rather, it need be only *an* appropriate unit.” (Italics in original)(Citation omitted) Furthermore, “(i)n determining whether the unit sought is appropriate, the Board considers whether a ‘community of interest’ exists among the employees sought. [Citations omitted] The Board looks to a number of factors to determine whether show [sic] a community of interest exists. Where a history of bargaining exists, however, prior bargaining history is normally accorded substantial-controlling, really-weight in determining the appropriateness of a bargaining unit. That is units with extensive

bargaining history generally remain intact unless they are repugnant to Board policy or interfere with rights guaranteed by the Act. [Citation omitted] The sole exception to this bargaining-history rule concerns representation of ‘crafts’”. (Emphasis added) DDE 19-RC-14213, 7.

In determining a craft severance issue, the Region explained that, “(a)s noted above, a substantial-as here-bargaining history normally controls, and predetermines the appropriate unit. However, Congress, in section 9(b)(2) of the Act, added a provision that, ‘the Board shall not...(2) decide that any craft unit is inappropriate...on the ground that a different unit has been established [ ] by a prior Board determination... This Section has been interpreted to mean that the fact that a ‘craft’ has had a substantial bargaining history of being part of a larger unit does not control, but it is still a relevant factor. A smaller, separate craft unit can be carved out, or severed, from the larger unit, under proper circumstances.” DDE 19-RC-14213, 8-9. This case, 19-RC-14213, is factually different from the instant petition, so in that sense is not controlling. But it is important for the propositions, that the Region acknowledged that in a severance situation *an* appropriate unit is acceptable, and that “(a) smaller, separate craft unit can be carved out, or severed, from the larger unit, under proper circumstances.” *Ibid*.

Third, the Carpenters and Millwrights have established a separate identity, contrary to the Decision. Fourth, the Decision’s finding that there is a high degree “of integration of the Employer’s production processes” is also incorrect. Decision, 16. In support of this conclusion, the Regional Director explained that, “(f)urther, the record reveals some unquantified but regular temporary transfers of craft employees between the multi-craft teams based on work or need.” This conclusion is simply not correct. The Region also erroneously concluded that the pattern of bargaining in the industry does not favor Petitioner.

The Board traditionally examines the *Mallinckrodt* factors in testing whether the

proposed bargaining unit is fit to be severed. The Board considers the following factors in determining whether severance of an existing bargaining unit is appropriate: (1) whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen or a functionally distinct department; (2) the collective-bargaining history related to those employees; (3) the extent to which the petitioned-for unit has established and maintained a separate identity during its inclusion in the overall unit; (4) the degree of integration of the employer's production processes; (5) the qualifications of the union seeking severance; and (6) the pattern of collective bargaining in the industry. *Mallinckrodt Chemical Works*, 162 NLRB 387 (1967). The list is not an inclusive or exclusive listing of all the criteria involved in making a unit determination in severance cases. Determinations are to be made on a case-by-case basis and after weighing all the relevant factors. "In severance cases such as this we do not apply automatic rules but rather evaluate all relevant considerations." *Kimberly-Clark Corp.*, 197 NLRB 1172 (1972).<sup>15</sup>

Here, not only do the factors set forth in *Mallinckrodt* support the Petitioner and severance, but the purposes of the Act stand to be effectuated with the continuation of

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<sup>15</sup> In the Decision not all relevant factors were considered: "(s)ince *Mallinckrodt Chemical Works*, 162 NLRB 387 (1967), determinations with respect to craft units have been made on a 'case-by-case basis.' In severance cases...we do not apply automatic rules but rather evaluate all relevant considerations. [Citation omitted.]" (Emphasis added) *Metropolitan Opera Association, Inc.*, 327 NLRB 740, 741 (1999) (Hurtgen dissenting).

Furthermore, the Decision neglected important considerations in deciding to dismiss the petition. For example, "(i)n determining whether a petitioned-for craft unit is appropriate the Board examines (1) whether the employees take part in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of the excluded employees; (3) whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines; (5) and whether the petitioned-for employees share common interests with other employees. [Citation omitted] However, in non-construction industry cases, the Board has not limited its inquiry solely to these factors. Instead, the Board will 'determine the appropriateness of the craft unit sought in light of all factors present in the case.' *MGM Grand* at 532, citing *E.I. du Pont & Co.*, 162 NLRB 413, 417 (1966).



Petitioner's long-standing representation of its members' interests. Briefly, each *Mallinckrodt* factor is set forth below along with argument, etc. as to why the factor supports Petitioner.

**(1.) The Proposed Unit Constitutes a Distinct and Homogenous Group of Skilled Journeymen Craftsmen**

The facts of this case show that carpenters and millwrights are allied crafts that are homogenous and distinct from all other HAMTC-represented crafts. In this regard, “(t)he Board has long held that a ‘craft unit’ consists of a distinct and homogenous group of skilled journeymen craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require use of substantial craft skills and specialized tools and equipment.” *MGM Mirage d/b/a the Mirage Casino-Hotel*, 338 NLRB 529, 532 (2002), citing *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994).

Carpenters and millwrights each have jurisdictional assignments of work that are exclusive to them at Battelle and that cohere with traditional craft work for carpenters and millwrights. They are assigned work orders along craft lines. Carpenters exclusively perform locksmithing, fabrication of crates and shipping material, assemble furniture and erect and dismantle scaffolding. Millwrights exclusively inspect and maintain industrial machines, including cranes. Local 2403 aggressively policed and enforced its members' work and craft jurisdiction. Carpenters and millwrights perform craft specific work at least 90% of the time. Prior to Local 2403's ouster from HAMTC, carpenters and millwrights shared a Chief Steward who represented both crafts equally well.

Among other things, carpenters and millwrights each have separate and distinct tools, specialized and exclusive training, physically separate shops (carpenters), and separate overtime and seniority lists from all other crafts. They also feel a deep, strong community of interest with

each other, and share a long history of mutual aid and support. Carpenters and millwrights have higher wages than other crafts at Battelle/PNNL. ER EX #17. See, *MGM Mirage d/b/a the Mirage Casino-Hotel*, 338 NLRB 529, 532-533 (2002)(“Moreover, the carpenters are paid at a skilled labor level and substantially more than unskilled employees.... [Footnote omitted] These pay rates, along with the experience requirement, strongly support our finding that the Employer seeks and hires carpenters with journeymen carpentry skills. Moreover, the absence of a formal apprenticeship program does not negate this finding where the carpenters are hired with significant experience.”) (Footnote omitted)

Finally, there have been very few if any true, meaningful “transfers” amongst the crafts at Battelle. Thus, the Regional Director was wrong to rely on transfers at all in denying the petition. The Board has found that, “(e)vidence of 14 transfers over a 10-year span is insignificant. [Citation omitted] These are simply not ‘the type of periodic temporary transfers or lateral, two-way transfers between departments that that may suggest blurred departmental lines and truly fluid work force with roughly comparable skills. [Citation omitted]’ *MGM Mirage d/b/a the Mirage Casino-Hotel*, 338 NLRB 529, 532, 533-534 (2002). This *Mallinckrodt* factor weighs in favor of Petitioner.

**(2.) Labor Stability Will Not be “Unduly Disrupted” by the Change from Status Quo**

Mr. Triezenberg, who has negotiated seven or eight contracts for Carpenters and Millwrights formerly represented by the Metal Trades, testified he had experienced no issues with those contracts and he reasonably expects none to arise here.

Further strengthening Petitioner’s argument is that, notably, Battelle has taken a neutral position regarding severance and “the appropriateness of the petitioned-for unit.” Decision, 2; HT 12: 9-16. This factor was not given any weight in the Decision. Equally noteworthy, the

Employer's Labor Relations Manager, Mr. Renteria, unequivocally endorsed Local 2403's President as an honorable person who he was confident he could negotiate with in good faith. In his words, "absolutely". He also specifically refused to state that recognizing Local 2403 as the collective bargaining representative for Carpenters and Millwrights at Battelle would lead to labor relations instability. Mr. Flannery similarly anticipated no disruption in labor relations at Battelle.<sup>16</sup> These considerations are glaringly absent from the Decision.

Because of the long bargaining relationship Local Union 2403 has had with Battelle both as part of HAMTC and in dealing with Battelle management at the day-to-day lower level, the likelihood that severance of a carpenters/millwright unit would disrupt or destabilize labor relations is minimal, if not non-existent.

If the Regional Director had considered Battelle's neutral position, and other relevant testimony, he would reasonably have concluded that Battelle did not fear labor relations instability would ensue should the petition be granted. If Battelle had such concerns, it would certainly have opposed the severance of a carpenter/millwright unit from the overall unit. Battelle did no such thing. Indeed, Battelle's Director of Labor Relations, Ken Renteria, when asked explicitly did not testify that having to bargain separately with Petitioner would lead to labor relations instability at Battelle. HT 220: 3-13. This *Mallinckrodt* factor favors the Petitioner, and it was error for the Regional Director to conclude otherwise in the Decision.

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<sup>16</sup>

A ... We want our voice.

....

Q Do you think having a carpenters' [and millwrights] unit represented by Local 2403 or the Petitioner in this matter would be disruptive at Battelle?

A I do not.

Q Why not?

A Because nothing will change. We want to negotiate right beside them if they [HAMTC] want. [HT 344:6-17]

**(3) The Carpenters and Millwrights Have Kept Their Separate Identity During the Period of Affiliation in a Broader Unit**

As explained herein, *supra*, for decades, Local 2403 carpenters and millwrights have maintained a separate identity from all other crafts at the work site. Prior to the revocation of the dues checkoff, carpenters and millwrights at Battelle paid membership dues to Local 2403, attended their own meetings, and elected their own officers. These crafts identify as carpenters and millwrights. Their former Chief Steward still holds Local 2403 meetings. They each were represented by one Chief Steward who had a vote on the Negotiating Committee and a seat on the Jurisdictional Committee. But the carpenter and millwrights no longer have this exclusive representation. This *Mallinckrodt* factor favors Petitioner.

**(4) The History and Pattern of Collective Bargaining in the Involved Industry Supports Severance**

The scientific research work done by the 4,000 or so scientists may be Battelle's business, but the relevant industrial work at issue here is maintenance of facilities, which does not deviate much from other examples where PNWRCC has separately negotiated with the Employer that previously had exclusively negotiated with other metal trades councils for carpenters and/or millwrights. The evidence in the record, as discussed *supra*, did not establish this *Mallinckrodt* factor against Petitioner. (See, e.g. II.K., herein, *supra*.) If anything, the record is inconclusive.

**(5) The Employer's Production Processes are Not Fully or Even Mostly Integrated**

There is no meaningful integration of the Employer's work processes. Each craft at Battelle does maintenance work within the exclusive scope of its jurisdiction. Due to the vast geography covered by the worksite, which makes it efficient to assign multi-craft teams to specific buildings, there are carpenters and millwrights on work teams with other crafts that have

separate craft maintenance duties in the same buildings. The work performed is not interchangeable amongst crafts.

Moreover, the Regional Director was wrong to consider that, to the extent there is integration of Battelle's operations, it requires dismissal of the petition. The Board has held that, "(c)ontrary to our dissenting colleague, we are not convinced that either the integrated nature of the Employer's operation or the instances of unskilled carpentry work being performed by noncarpenters negate the craft status of the carpenters so as to require that they be included in a larger engineering department unit." *MGM Grand* at 532.

Also, "the employees on the carpentry crew have craft identity. The Employer assigns all work requiring more than the most basic of skills along craft lines. Virtually all of the carpentry work at the Mirage is performed by the carpentry crew. While there are some examples of noncarpenters performing carpentry-like work, these are limited to low-skilled work, such as tightening screws on a chair or fixing a drawer slide. Additonally, where the carpenters perform work that is not traditional carpentry work, it is closely related to their carpentry work." *Id.* at 533.

Furthermore,

(t)he carpenters are also highly skilled and they perform nearly all of the Employer's high-skilled carpentry work.... That there is some overlap in lesser-skilled duties does not destroy the appropriateness of a separate carpenters unit. [Citation omitted] ...

Even when the Employer assembles mixed crews on the night shift or during the year to refurbish its hotel rooms, each member of the crew performs only the work associated with their traditional craft—carpentry, plumbing, painting, etc. [Citation omitted]....

The carpenters' skill is also reflected in the machinery they employ in their workshop. The Employer provides nearly every piece of carpentry equipment imaginable. While other employees may occasionally enter the carpentry shop to pick up scrap wood or other simple tools, there is no evidence that employees other than the carpenters use the skilled machinery located in the shop. Their skill is also reflected in

the fact that their wages are near the top of the Employer's engineering department pay scale. [*Ibid.*]

Finally, "However, where as here the integration has not obliterated the lines of separate craft identity, integration is not, in and of itself, sufficient, in the present circumstances, to preclude the formation of a separate craft bargaining unit. [Footnote omitted]" *Anheuser-Busch, Inc.*, 170 NLRB 46, 48 (1968).

In large, spread-out facilities such as Battelle at Hanford, some integration is to be expected. "The conclusion seems inescapable that mixed craft crews will at times be required at a complex facility such as this, where apparently 50 separate buildings must be serviced by skilled craftsmen and work taken to the craft shops whenever necessary. Should that fact be allowed to cloud the entire issue and, in effect, be used as a reason for denying severance in an industry where bargaining for crafts does exist? I think not." *Dow Chemical Company, Rocky Flats Division*, 202 NLRB 17, 22 (1973)(Member Fanning dissenting)(Majority opinion denies severance petition for a maintenance department at an Atomic Energy Commission campus.)( "...I do not believe that the mere fact that craft employees have been included in a more comprehensive unit can bar a petition for an election in a separate unit of craft employees." *E.I. DuPont de Nemours and Company*, 162 NLRB 413, 420 (1966) (Member Fanning, concurring))

In *Burns and Roe Services Corporation*, 313 NLRB 1307 (1994), the NLRB granted petitioner's Request for Review and reversed a regional director's decision denying a severance petition. In that case, severance of a craft unit was warranted even though, "(a)ll employees receive the same fringe benefits and holidays, and are subject to the same personnel policies." *Burns and Roe*, at 1307. Wages among the different crafts are different, as at Battelle. *Ibid.* The craft employees are organized into different groups, similar to the structure at Battelle. For

example, “(t)he structural coordination group includes carpenters, laborers, and painters.” *Ibid.*, at fn. #4. Unlike the craftspersons in *Burns and Roe*, the carpenters and millwrights at Battelle do receive specialized training. *Ibid.* Moreover, severance was appropriate in *Burns and Roe* even though “(e)mployees generally work with employees in their assigned groups. Even when the employer assembles a team of employees for a particular task, electrical employees generally perform the electrical work while mechanical/structural employees perform the structural and mechanical work. Electrical employees do not perform nonelectrical work.” *Id.* at 1308.

Such is the case with respect to carpenters and millwrights at Battelle, but the Regional Director still denied severance of a carpenter/millwright unit. The lack of a bargaining history at the facility was only one of many factors considered by the Board in *Burns and Roe*. Although the carpenters/millwrights are not in a separate department nor supervised separately, they “perform work typically performed by members of their craft.” *Id.*, at 1308. Furthermore, regarding lack of an apprenticeship program, as cited in the Decision, the Board rejected the finding of the Regional Director and explained that, “(c)ontrary to the Regional Director’s [decision], the fact that the Employer does not have a formal apprenticeship program or conduct extensive on-the-job training does not necessarily negate separate craft status, as the Employer requires that the electrical employees at the very least have extensive experience and no other class of employees is required to have the same level of electrical knowledge. [Footnote omitted]” *Ibid.* At Battelle, many carpenters and millwrights have apprenticeship training, and Battelle only hires experienced carpenters and millwrights.

The Board also explained that, “(f)urther the Employer does not disregard craft distinctions in making work assignments and does not assign employees solely according to

need. [Footnote omitted] On occasion, when a particular job requires a mix of skills, the Employer may assemble a team of employees; however, even in those situations, electricians principally work on the electrical systems while nonelectrical employees work on the mechanical systems. Moreover, the Employer neither trains nonelectrical employees to perform electrical work nor trains electrical employees to perform nonelectrical work.” *Id.*, 1308-1309.

Furthermore, the Board explained that, “(w)e further find, contrary to the Regional Director, that the evidence regarding crossover work is not sufficient to negate the separate identity of the petitioned-for electrical department employees. Any electrical work performed by nonelectrical employees during preventative maintenance is limited primarily to lesser skilled tasks.” *Id.*, at 1309. “The Board has found that some overlap of lesser skilled duties does not preclude finding the petitioned-for unit appropriate. [Footnote omitted]” *Id.*, at 1309.

Lastly, “(t)he Board has found that a strict separation between crafts is not required in order to find a separate craft unit appropriate. Integration of operations requiring some crossover between craft and noncraft employees, or between employees of different crafts is permissible. [Citation omitted]” *Ibid.* In view of the record as a whole, the Regional Director was wrong to find against Petitioner with regard to this *Mallinckrodt* factor.

**(6) PNWRCC affiliated with Local 2403 is Eminently Qualified to Serve as Representative Given its Experience Representing Employees Like the Carpenters and Millwrights Here**

The Regional Director found that, “Petitioner has extensive experience with the employees in the petitioned-for unit as an affiliate union in HAMTC, and Petitioner’s parent organizations have extensive experience representing maintenance units in general.” Decision, 16. The Regional Director rejected Intervenor’s arguments against Petitioner, and concluded



that, “(i)n view of the above and the record as a whole, I find this factor favors Petitioner’s position.” Accordingly, Petitioner does not seek review of the Decision in this respect.

**B. Battelle Carpenters and Millwrights Deserve Qualified and Knowledgeable Local Union Representation, the Same as Every Other Craft at Battelle Enjoys**

*A de facto* severance at Battelle has already stripped the eleven carpenters and ten millwrights of their rights to affiliate with each other and their rights to have their chosen Local Union represent them within the parameters of HAMTC’s overarching representation. Why were Carpenters and Millwrights of Local 2403 treated differently than the members of other HAMTC-affiliated unions? There is no good answer, and the only remedy is to sever a bargaining unit of carpenters and millwrights and allow them to have a free choice as to their collective bargaining representative; a fundamental right under the Act.

It is public record that in 2005, the Executive Board of the MTD disaffiliated all UBC unions, as well as Teamsters and others, and at Hanford assigned their members directly to HAMTC. Pet. Exh. “11”. This action was later rescinded by MTD’s “Solidarity Agreement”, which accepted Local 2403 back into the HAMTC fold. A few years later, in 2011, the MTD unilaterally voided the Solidarity Agreement against UBC affiliated unions.

Specific to the only job site at issue here, the MTD ordered HAMTC to disaffiliate Battelle’s carpenters and millwrights’ chosen representative, Local 2403, from HAMTC. Among other things, HAMTC unilaterally terminated these members’ dues check-off to Local 2403, an egregious usurpation of these member’s rights to affiliation and mutual aid.

MTD then dealt the carpenters and millwrights out to three different craft unions that never represented carpenters or millwrights before and have no knowledge, qualifications, experience or tradition of looking out for their best interests, regardless how well-intentioned they are. This was done with zero input from Local 2403, or its affected membership; they had

no say in the matter whatsoever. Without the knowledge or input of Local 2403 or its members, HAMTC then negotiated an MOU with various employers, including Battelle. Indeed the MOUs were not even known to former Local 2403 Chief Steward Scott Flannery until the hearing in this matter commenced on September 10, 2014. These MOUs dictated the fate and disposition of Local 2403 carpenters and millwrights who had formerly enjoyed ardent and effective representation at Battelle through their Local 2403. Local 2403 uniquely championed its members' traditional jurisdiction, as well as negotiated their wages, training and sundry other craft specific concerns, with minimal or no input from, and merely formal rubber-stamping by, HAMTC.

HAMTC, as Intervenor, has claimed the rending asunder of the Carpenters and Millwrights' relationship to their chosen representative within the HAMTC umbrella changes nothing – everything is as it ever was – because HAMTC has been the exclusive bargaining representative with Battelle for about 50 years.

While HAMTC has been the certified bargaining representative at Battelle, in practice, and in the real day to day dealings at the workplace, each affiliated Local Union organized along craft lines, has played a vital and irreplaceable role in representing the unique craft concerns of its dues paying members.

Local 2403 enjoyed numerous rights and powers under the shelter of the HAMTC umbrella and it used these powers in full and unbridled measure to the benefit of its carpenters and millwrights at Battelle. These powers included, for example, negotiating Appendix As to the CBA, having a seat on the Negotiating Committee, having a seat on HAMTC's Executive Board, filing jurisdictional disputes without clearing it with someone who is not even part of the same craft union, arbitrating grievances and having a seat on the Jurisdictional Committee.

Planting Carpenters and Millwrights within foreign soil, namely, craft unions that it has no community of interest with, and, in fact, have a long tradition of strife with, can only cause the turmoil the Board should avoid. For all these very important reasons, the Request for Review should be granted. The carpenters and millwrights have essentially been stripped of their Local Union, i.e. Petitioner, and have lost that valuable shared relationship and their craft identity through no fault of their own. They have been scattered into other unions, who don't know their crafts but who now "represent" them.<sup>17</sup>

#### IV. CONCLUSION

The Regional Director made erroneous findings against Petitioner as to some of the *Mallinckrodt* factors. This case presents very unique facts and circumstances deserving of the Board's full review. The very fundamental rights of employees intended to be covered under the Act are at issue here. Should the Board not grant review and reverse the Decision, the Board will be stating that craft union members of one union, in which they have been content and well-represented, can be forced, against their will and with no say in the matter, into another different craft union, and that there is nothing they can do about it. There is simply too much at stake for the Board to deny the Request for Review. Based on the foregoing compelling and substantial reasons, Petitioner respectfully requests that its Request for Review be granted.

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<sup>17</sup> In *Electric Boat Corporation*, 1-RC-124746, the Decision and Direction of Election ("DDE"), dated June 26, 2014, granted the petitioner Carpenters Union's petition for a severance election. The Regional Director explained, "I am in accordance with the Petitioner that stability, labor peace and the status quo can be better maintained by giving the carpenters their right to an election. Otherwise, the carpenters will be divided into segments, represented by other unions, and the members will lose their longstanding relationship with their union and their identity as carpenters." DDE, 10-11. These same reasons warrant granting the carpenters and millwrights their own election at Battelle.

November 7, 2014  
Washington, D.C.

Respectfully submitted,

s/ Brian F. Quinn

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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2014, I caused to be filed the foregoing *Petitioner Pacific northwest Regional Council of Carpenters, Local Union 2403's Request for Review* with the NLRB via the NLRB's e-filing system with:

National Labor Relations Board  
Office of Executive Secretary  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570-0001

Ronald K. Hooks, Regional Director  
National Labor Relations Board, Region 19  
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I also certify that a true and correct copy of same was served on the following parties, in the following manner, as shown below:

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